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ABSTRACT

This is a study booklet composed of essays on community preparation and the role of the churches in school desegregation. One of the essays presents a theological rationale for church involvement. Racial justice and integration in the educational system is the topic of another essay. To add understanding to the constitutional issues involved in school desegregation, a brief review of Supreme Court decisions is provided. Major integration litigation discussed includes Plessy Vs. Ferguson, Swann Vs. Charlotte-Mecklenburg, and Milliken Vs. Bradley. An essay which addresses the role of the churches in quality education discusses central issues and strategies for cities undergoing desegregation. A city with segregated schools undergoes three stages. First is the time before a court has found the city to be guilty of de jure segregation. The second period extends from that original decision until a court of last appeal has ordered a finalized plan to be put into effect by a specific date. Last, comes the time for implementing that plan peacefully. It is suggested that each stage in the progress toward quality education and school integration calls for somewhat different roles. The role that the church takes on at each particular stage is shaped by the strength and commitment of the resources available. An annotated bibliography on desegregation research is included. (Author/AM)

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Study Booklet

SCHOOL DESEGREGATION: COMMUNITY PREPARATION AND THE ROLE OF THE CHURCHES

U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE
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ROCHESTER
WILMINGTON

KANSAS CITY, MISSOURI – August 26 - 27, 1975

BUFFALO
CINCINNATI
DAYTON
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MILWAUKEE
STOCKTON
TOLEDO

LOS ANGELES – February 27 - 28, 1976

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NEWBURGH
ROCHESTER
SYRACUSE
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COLUMBUS – October 9, 1976

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CINCINNATI
COLUMBUS
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SPRINGFIELD
STEUBENVILLE
TOLEDO
YOUNGSTOWN

FOREWORD

by J. Blaine Fister

This study booklet has been developed as a result of a series of ecumenical consultations on "School Desegregation: Community Preparation and the Role of the Churches," sponsored or in cooperation with the Unit on Education in the Society of the Division of Education and Ministry of the National Council of the Churches of Christ in the U.S.A.

The series of Consultations began in November, 1974, and involved primarily representatives appointed by ecumenical agencies in cities across the country that had faced, were about to face, or were in the midst of court ordered desegregation programs. The participants were persons knowledgeable about the school desegregation efforts in their own cities, also selected experts or specialists invited by the ecumenical agencies. The format of the consultations followed a similar pattern: an opportunity for the participants to give the background and the current situation in the cities, including the problems as well as positive effects of their desegregation efforts; time for input from outside experts; the opportunity to work in small groups to explore more deeply the issues and problems; and to come up with practical suggestions that worked or could work in other communities facing turmoil, tension, and possible violence during efforts to desegregate the public schools.

This booklet contains some background essays which should be helpful to persons concerned with issues of school desegregation/integration. Frequently the question has been raised, "Why should the churches be involved in this particular issue?" Norman Faramelli of the Boston Industrial Mission has written the first essay, briefly presenting a theological rationale for church involvement. Because of the strong racist undertones and overtones in cities torn apart by attempts to desegregate the schools, Ricardo Potter was asked to write the essay on "True Integration or Justice Within the Educational System." To understand more clearly the Constitutional issues involved we have included a brief review of the Supreme Court decisions prepared by Hayden Gregory, Chief Counsel, Community Relations Service, U.S. Dept. of Justice. The paper was presented at the Consultation sponsored by the Ohio Council of Churches. The article by Henry Russell, "The Role of the Churches in Quality Education/Desegregation Efforts: Conflicts and Reconciliation," reflects some of the central issues and strategies that emerged during the Consultations, which should be helpful to communities looking for specific "things to do." A selected, annotated bibliography prepared by Mayer Weinberg, Editor, *Integrateducation* Magazine, is included for those who want to become acquainted with some of the literature.

The series of Consultations grew out of expressed need from the field. At

a meeting of the National Association of Ecumenical Staffs, Estes Park, June, 1974, there was a request that a series of Consultations be set up in order to be of help and guidance in cities undergoing desegregation efforts. We express deep appreciation to the ecumenical agencies for their cooperation, help and participation in the five consultations listed below.

Our thanks also go to the Reverend Nate VanderWerf and Dr. Arleon Kelley of the Commission on Regional and Local Ecumenism for the National Council of Churches for their counsel and encouragement in moving ahead with the consultations. We are also greatly indebted to Dr. Harold Viehman, National Director, Ministries in Public Education, without whose support the Consultations could not have been held. Also, providing technical assistance, advice, and leadership were staff members of the National Center for Quality Integrated Education, Mr. Donald Shire and Ms. Christine Kirk, to whom we are greatly indebted. And last but not least, our thanks to Mrs. Joan Roll and Mrs. Ruth Russ for helping to prepare the manuscript for publication.

J. Blaine Fister, Director Public Education Issues, and Coordinator, Education for Christian Life & Mission, Division of Education & Ministry, NCCC

THE CHURCH'S INVOLVEMENT IN SCHOOL DESEGREGATION

by Norman J. Faramelli

School desegregation is one means of addressing the racial inequalities that exist in the U.S. Those who advocate it recognize those injustices, and also the prominent role that education plays in industrial society. The Supreme Court decisions (in 1954 and subsequently) have consistently debunked the myth of "separate but equal." Historically, in the U.S., separate has meant racial inequality, and inferior education for minorities. Hence, inadequate education actually means inadequate opportunities to participate in society.

The court orders in urban centers (Boston, Denver, Louisville, etc.) have dealt only with *de jure* not *de facto* segregation. That is, the racial imbalance in the urban schools was seen, not as an historical accident, but as the result of policies which deliberately fostered racial separation. *De facto* segregation, i.e., separation allegedly resulting from other factors, has still to be addressed by the courts.

Although the court orders apply only to the cities, it is clear that racial segregation is metropolitan, not just urban. The surrounding communities around most urban centers are racially and economically segregated (via exclusionary zoning). That may be *de facto* segregation legally, but it is hardly accidental. The insidious combination of racial and economic discrimination (despite open housing laws) presents a double obstacle to minorities. When educational opportunities are denied, the problems are intensified.

Busing is one of the means to implement school desegregation. Despite its problems it is being used in the absence of other alternatives. Although the mode of transportation is often hotly debated, the real issue is not busing, but integrated education. School desegregation is premised on the notion that racial integration and quality education go together hand-in-glove. It is a means to improve educational quality for all students, and to afford them the opportunities to participate fully in industrial society. Although education is no guarantee of full participation in the advantages of our society, it is certainly of decisive benefit. While there are many other benefits to education besides skills needed for employment, the links between earning and learning are particularly important in minority communities.

Despite the problems, court ordered school desegration is working successfully in most areas. Even in Boston, where the school disturbances have received international publicity, most of Boston's schools have been peacefully and successfully integrated. Students in many of the schools have shown con-

siderable improvement in reading scores, and despite the woes over busing, enthusiasm for quality education is at an all-time high among many of the Boston parents.

WHY THE CHURCH'S INVOLVEMENT?

What does school desegregation have to do with the Church? The answer is not obvious to many Church people. A comprehensive response can be given only by exploring the roots of our faith. As Christians, we believe that God became a human being in Jesus Christ and fully identified with the human condition. There are social implications of the Gospel message. Jesus lived, not as a religious escapist, but as one immersed in first century life, midst its religious, political and economic institutions. Hence, our faith has both social and personal dimensions.

Education should be of particular interest to the Church, because it has long been concerned with the family, and particularly the development of children. Over the years, there have been a variety of statements by various religious bodies on education. For example, a National Council of Churches Statement in 1963 on The CHURCHES AND THE PUBLIC SCHOOLS noted:

> "As Christians we believe that every individual has a right to an education aimed at the full development of his capacities as a human being created by God, his character as well as his intellect. We are impelled by the love of neighbor to seek maximum educational opportunities for each individual in order that he may prepare himself for responsible participation in the common life."

Once that is updated to avoid male-only references, it can still serve as a useful guide.

The theological foundations of the Gospel message are seen in three ethical norms—social justice, personal freedom, and human solidarity, which serve as the underlying values in quality integrated education.

A) *Social Justice*—The message of the prophets for social justice permeates the entire Bible. In the Scriptures, God's bias is clearly on behalf of the poor, the disenfranchised, and the dispossessed. Yahweh tells the prophet Isaiah: "Cease to do evil, learn to do good, seek justice, correct oppression, defend the fatherless and the widow" (1:17) who in biblical days were the symbols of powerlessness. That bias goes beyond the rule of kings, for even they stand under God's judgment. Also, God's justice is not determined by majority approval, which is something worth remembering when the busing foes suggest that school desegregation be decided by referendum.

Minorities in the U.S. are the victims of both racial and economic discrimination. Class or economic status in the U.S. is a significant element to be sure, but it is often overshadowed by race. In instance after instance, the economic status is soon forgotten and people are evaluated solely on race. When racial tensions flare, no one asks if the blacks are educated or have high incomes. For example, when the black lawyer Ted Landsmark had his nose broken with an American flag in front of Boston City Hall, the angry white youths did not ask any questions about his degrees or assets. Nevertheless, when racial factors are compounded by economic factors, the situation is

severely worsened. In a society that scorns the poor as symbols of failure, it is doubly hard to be both poor and black.

B) *Personal Freedom*–Traditionally, minorities have been systematically excluded from equal opportunities in industrial society. Until recently, it made very little difference if blacks had much formal education. Those who were well educated and fully qualified were usually denied jobs commensurate with their skills and abilities simply because they were black. Now that some of these racial barriers are being removed in government, industry, business, education, and religious institutions, it becomes imperative that blacks be able to take advantage of the new opportunities. Unfortunately, many minorities are still excluded from an adequate educational process that can provide them with skills they need to participate fully in the institutions of society.

Quality education for all is therefore linked with freedom of opportunity for all. As God's creatures, God expects and desires each of us to develop his or her potential, to be a free and creative human being. Although we are all conditioned by historical forces–the modern day "powers and principalities," –we should recall the Gospel message that Christ has overcome the "powers and principalities" (Col. 2:15), and "The Lord is the Spirit, and where the Spirit of the Lord is, there is freedom" (II Cor. 3:17).

Human freedom is difficult to define. It is ironic, for instance, that the most bitter opponents of school desegregation (and especially busing) usually appeal to the notion that their freedom is being violated. That is why freedom and justice always have to be understood together. Quite often the exercise of freedom by some people severely limits the personal freedom of many others. Yet freedom has to safeguard opportunities for all; it can not be used as an excuse for one group to suppress another.

Educational opportunities provide the option to develop one's potential and become free to experience self-realization. Yet education by itself guarantees neither personal freedom nor social justice. Adequate job opportunities must be available after the educational process. Unless job opportunities are created, further education can mean elevating people to a higher skill-level of unemployment.

C) *Human Solidarity*–Since we are all part of the human family, made in the Divine image (Gen. 1:26), we are tied together in human solidarity. If one person's human rights are violated, we are all adversely affected, even if we experience short-term personal gains by such exploitation. John Donne captured it well when he wrote:

> "No man is an island, entire of itself, every man is a piece of the continent, a part of the main. . . any man's death diminishes me, because I am involved in mankind; and therefore never send to know for whom the bell tolls, it tolls for thee."

A democratic society cannot survive unless common bonds exist between diverse groups. Human solidarity is essential for people in the cities and surrounding communities. In particular there is a need for more creative urban-suburban cooperation. The cities under court order cannot be viewed as "the

problem." The problem is the entire housing and racial discrimination pattern throughout the metropolitan region. In education, solidarity can be expressed in a variety of ways, such as:

(1) voluntary urban-surburban educational exchange programs; two way programs where students meet in several places, providing new educational experiences in the context of a heterogeneous gathering.

(2) the voluntary transfer of urban minority students to suburban schools if they so desire. For instance, METCO in Boston is such a program that provides additional options for blacks.

Another expression of metropolitan solidarity is that schools in the predominately white areas recognize the urgent need for multi-racial and multi-ethnic education in their relatively homogenous communities. Such educational experiences are essential if all students are to be prepared to live in a democratic society.

There is also a need to equalize the educational expenditures and the tax burdens in the suburbs and the cities. In most states the disbursement formulas for school aid favor those communities that already are spending the most on education. This should be reversed. The tax burdens on urban residents are enormous, because the urban core not only provides services to the entire region, but is the repository for most of the problems of low income people. Hence, a much smaller percentage of municipal taxes is available for education in the cities than in the suburbs. Thus, a more progressive tax structure is needed.

The values of social justice, personal freedom and human solidarity have to be brought to bear on some of the difficult problems associated with busing. First, the melting pot notions have been resisted repeatedly in American society, both by the majority and increasingly by minority groups. There are ethnic and cultural differences that should be celebrated, not denied. Hence, one can appreciate some of the legitimate opposition to court ordered busing. There is the "turf" attachment (ties to one's locality), ethnic identity, wanting one's child as close to home as possible, etc. For example, it is said that parents participate more in the neighborhood school than at regional schools. This may be true, but there are also educational drawbacks to neighborhood schools. That is why most junior and senior school students are bused throughout the U.S., independently of racial factors. In fact, fewer than 20% of all children bused in our nation are bused for racial desegregation purposes. But turf attachments, ethnic identity and local nostalgia have to be pitted against the question: what kind of educational experiences are needed if this society is to work harmoniously together?

Furthermore, after the court order has been issued, the real issue is—how can it be implemented peacefully and effectively so the education of *all* students is enriched? Efforts to resist it jeopardize the educational future of both blacks and whites. Although the respect for various ethnic perspectives is vital, any reversal of the court orders now would be interpreted in effect as a victory for the forces of white racism.

THE CHURCH'S INVOLVEMENT *IN* AND *BEYOND* BUSING

The busing issue has to be interpreted always in the broader context. It is a tool to foster racial desegregation, which in turn is a means to promote quality education for all. The problems associated with busing and school desegregation are complex and sometimes ambiguous. One's participation in them demands much time and energy. Midst the forces and confusions of history, we are asked to make the best and most ethical decision, even if that choice often appears to be the selection between two undesirable options.

All Church people, whether they live in the city or in the surrounding communities, should be involved, but that involvement cannot be a two or three month commitment. It will take many years for the benefits of school desegregation to become manifest. It will take at least as much time for the proper urban/suburban exchange programs to be established, and for effective multi-racial/multi-ethnic educational programs to be implemented in the suburban communities. Our participation will need the power of the Holy Spirit enlightening, guiding and sustaining us in all our efforts. It will also demand a supportive worshipping community that can help us stay involved, and help us not only to make commitments but to honor the commitments we make. The sustaining power of the Gospel needs to be appreciated in a new and dramatic way.

There are no short-term, easy solutions. Busing is fraught with problems, but the alternatives are either less desirable or non-existent. As long as we proceed with the notion that racial integration and quality education are inextricably related, we will need some tools—such as busing—to achieve those objectives. Of course major academic improvements *can* and *should* be made in the predominately minority schools, just as racial consciousness raising should take place in the predominately white schools. It is ridiculous to think that blacks cannot learn in segregated schools or believe that racial attitudes cannot be changed in white suburban classrooms. Nevertheless, a democratic society that desires to be just, while preserving racial and ethnic identities, must find the appropriate ways to function harmoniously. There has to be some unity midst our celebrated pluralism, and quality integrated education is one way to foster that cohesiveness.

The Church's involvement must go beyond urban desegregation and ask: why were such court orders necessary in the first place? The answer is obvious. Not only was there gerrymandering of the school districts to foster racial isolation (as the courts have noted), but racial and economic housing segregation in the city and surrounding communities were major factors. As difficult as it may be to change those patterns, it needs to be done. Thus as noted previously, there is a dire need to understand and to deal with racial segregation as a metropolitan, not strictly an urban problem. Racial isolation in urban ghettoes is a direct result of the exclusionary zoning practices in many suburban communities, as well as of redlining and urban neighborhood isolation. Therefore, the suburban, as well as urban congregations, should re-

cognize and address those issues. The open housing covenant so popular in the 60's needs to be strenuously observed, and a new open housing convenant based on providing housing for various low and moderate income families now needs to be promoted vigorously. To provide that housing, federal and state programs—via direct investment or indirect subsidies—will be required in both the cities and surrounding communities. Our ultimate objective should be to integrate all communities in the metropolitan region, racially and economically, so that court ordered desegregation will become unnecessary. But such visions are a far cry from where we are at this moment of American history.

Meanwhile, we should support and encourage court ordered desegregation as a legitimate means to address racial inequality and inadequate education. That does not mean that we need be slavishly addicted to rigid formulas. Some tempering of quotas and formulas with political realism and public acceptability has to take place. For example, in many urban areas the minority population in public schools already has gone far beyond a proportion which can allow for meaningful racial integration in all schools. Nevertheless, where possible, it should be accomplished.

Where court orders are in effect, they should be carried out under the law, with order and dignity. The vigilante tactics of some anti-busing groups in certain cities can in no way be tolerated. Non-urban residents also should be involved, not only in the educational problems of the city, but in dealing with integrated quality education in their communities, by means of urban/suburban educational exchanges, more voluntary busing programs, multi-racial/multi-ethnic educational programs, and the equalization of educational expenditures and the equalization of the tax burden throughout the entire metropolitan region.

Many of our Church people who do not live in the city will vehemently resist efforts to get them involved in such issues. Many still do not see the interrelatedness and interdependence between the cities and the suburbs. Whether or not that interdependence is recognized is totally irrelevant. It is still a reality. Our task is to help people see that reality, and recognize our human solidarity.

Involvement in the issues of quality integrated education is a task for the entire Christian community. To promote social justice and remedy the inequalities that have persisted for generations, to foster personal freedom for all people (not for some at the expense of others), and to redefine human freedom in the context of social justice—these are Christian tasks. In addition, the recognition of our interrelatedness and interdependence with one another in the city and suburb is one aspect of understanding human solidarity. Involvement in such issues is not an extra or addendum for our faith commitment. It is intimately related to our own spiritual development and personal salvation. We respond to the saving love which God has already shown us, by caring for one another, especially for those who are deemed "the least of the brethren" (Mt. 25). In a word, a crisp biblical note summarizes well why we, as Christians, need to be involved in school desegregation:

"We love because God first loved us. If we say 'we love God' and hate our brothers and sisters we are liars, for they who do not love the brothers and sisters whom they have seen, cannot love God whom they have not seen. And this commandment we have from God, that we who love the Lord should love our brothers and sisters also."
(based on 1 John 4:19-21)

The Reverend Norman J. Faramelli was Co-Director of the Boston Industrial Mission at the time of the writing of this article. He is a member of the Board of Directors of the Boston Industrial Mission, and Chairman of its Urban Suburban Education Committee. He is Chief of Environmental Management of the Massachusetts Port Authority.

TRUE INTEGRATION OR JUSTICE WITHIN THE EDUCATIONAL SYSTEM

by Ricardo T. Potter

Alice Walker wrote a play which she entitled "Lulls," and in one instance she asked a character, Joe, the following question: "And the children's education?"

"Well," he frowns,"that's about the same here as in Boston, when they integrate the schools in this country, what they integrate is teachers. In my children's classes all the children are black, the teachers white, our oldest boy is just as rebellious as I was. . ."

For us to be able to understand this short dialogue, we first need to understand some basic concepts about what education really is; what do we mean by education? We need to be aware that education takes its form from the political and economic structures of each different nation. By this, I mean that Education is a sub-system dependent upon political and economic structures. Thus it serves the powers controlling those structures' change. If this is so—and I believe it is—the inevitably political nature of education can not be over-emphasized. For us to be able to understand education, it is necessary to begin by understanding the "Archaelogy of consciousness" that searches deeply into the "thought-language of the people." That is, we begin radically where people are in their perception of inhibiting cultural myths, because not even this initial and important understanding is apolitical or separated from political action. Understand by this, that it is society which, having formed itself in a certain way, establishes the education to fit the values which will guide it.

To think then, of Education in isolation from the power which establishes it, is to detach it from the concrete reality in which it was formed. This reduces education to the realm of abstract values and ideas, without acknowledging the conditioning which makes us think in a certain way. It also converts education into a repository of behaviour patterns. Yet another consequence is to make us see Education as the tool with which reality will be transformed. But one should never forget that the power which created Education will never allow Education to be turned against it. It is for this reason that a profound and radical transformation of education cannot take place, except when society is also radically transformed. All this must be clear in our understanding before we go into discussing the meaning of our beginning quotation. The knowledge of reality is indispensable for the development of

a consciousness of self, in the same way that consciousness of self is indispensable for knowledge of reality. It is therefore urgent for us to develop a certain degree of critical consciousness, together with a certain degree of critical action. Only this will help rid us of the idea that we should be governed by others for our own good—an attitude which must reflect doubts about our equal humanity.

When we are speaking about segregation we need to be aware that the major area in which it's going to occur is in education; and, my brother, it is based on racism. This is a white society and its Educational system was established to preserve and serve it. Blacks then, are precisely what whites will allow them to be: We and our children are taught by whites, governed by whites, punished by whites, rewarded by whites and supported by whites. Since this is the truth, blacks with a few independent exceptions, will be more white than black. I think this is "Joe's" point. What black people go through is the suffering of an educational oppression and neglect.

As I go along in my analysis, I'm aware that I'll not be saying anything new about this topic of segregation and racial justice. Yet what has been said needs to be said again and again as long as the situation persists. For a change to occur, continual hammering of the subject is a *must*. White racism is essentially responsible for the racial injustices which occur in this society. That's why it has been said, with all propriety, that "what white Americans have never fully understood—but what blacks will never forget is that white society is deeply implicated in the ghetto. White insititutions created it, white institutions maintain it, and white society condones it." And, after the ghetto is created what follows is natural—the institutionalization of racism through the educational system (the instrument of mass socialization par-excellence) at all levels, which drives America's general oppression of Black people into a particularly effective vehicle—mis-education of blacks. But again, the root cause of the continuing mis-education of blacks is the concept of education which governs this white society, a concept which can never offer Afro-Americans (nor any minority for that matter) an education for self-determination. If we think this can happen we are being naive. Many, however, may be inclined to believe that the mis-education of American blacks and other minorities is due generally to a lack of technology, knowledge, and other resources necessary to guarantee equal quality education for whites and blacks. This is not true. The truth really is, that if this happened, the white society would be defeating the purpose for which they establish their educational sub-system. It could only happen when (and if) the controlling white structure suffers a profound and radical change in its moral attitude towards blacks—seeking the same good for black people which they seek for themselves.

It could be said, generally speaking, that the schools have discharged their responsibility at large, in terms of primary instruction (i.e. reading, writing, arithmetic)—that is *except* for the minorities and particularly for the ghetto children. The vast majority of schools in this nation are segregated, mainly because they are neighborhood schools and residential patterns are segregated.

Segregation has all of the major ill effects possible on the quality of education. First, to be racially isolated is to be deprived of one of the most important ingredients of education, namely, the inter-action with others of different educational background. Segregation pushes the schools into overpopulation – this is most true of ghetto schools. It is a truth known by all, that in virtually every large American city, the schools attended by blacks are the most overpopulated. Further, segregation fosters curricula, materials and facilities which are poorly adapted to the students' life-experiences.

It should be understood that school integration is vital to the well-being of this country, because the racial isolation at all levels has produced centuries of myth, ignorance and bias on both sides. To change this attitude, if it *can* be done, we blacks have to face the fact that education under the present system cannot nourish our self-determination, self-esteem and self-worth, when the textbooks (especially the ones used in our elementary schools) do not even recognize the history, culture and contributions of blacks to American civilization. The educational system has not envisioned the training and education of the people of this nation for an integrated society. Accordingly, there is no easy way of developing the attitudes necessary to adjust to this change.

Segregation is an evil that creates division based on indifference to race prejudice and economic denial. It besets our nation, threatening every citizen. We can not fool ourselves. It is a fact that segregation has actually been increasing as more Caucasians flee to the suburbs, leaving the inner-cities blacker than ever. The Rev. Dr. Eugene S. Callender said of this situation, ". . . recent data indicated that many sections of the city now have a majority black population. Black Christians in the inner city see white Christians running breathlessly from us to the suburbs. We see them running, cursing silently, exiting in double-time from the inner cities with all their suffering people. . . This very rapid exodus of the white Christian from the places where the weak and powerless live can be one of the primary motivating forces of the black church." Dr. Callender continues to say: "We lovers of the black church don't let it bother us. Let the white Christians desert our city and our people. We will stand by them. We will stand with the forlorn in these places of abandonment." Then realizing that ghettos are the creatures of this white society, Dr. Callender says that "its time for us to shout fiercely: To hell with you phony Christians! if you cannot live where we live, if your children cannot grow where we grow, if you cannot suffer what we suffer, if you cannot learn what we learn, we have no use for you, or your crying insipid savior. If we must come to where you are to find quality and life, this nation is no good and integration is irrelevant" (N.Y. *Amsterdan News*: Saturday, May 22, 1973-C-3). The fact is, that this "running breathlessly" to the surburbs is based on the hostility of white Americans to integration, based on the fears about racially balanced schools which its Education has promoted.

We cannot ignore that one of the most persistent white myths is that school integration will cause academic achievement to suffer. In fact, does integration affect "academic achievement at all?" Those who voice this myth

mean that the child in a privileged environment will suffer socially and academically if his school becomes integrated. But we should never forget that children, all children—I mean the blacks also—need to develop pride and dignity and self-esteem in the course of education. This will not be possible as long as we have segregation and racism as the basis of our educational system. Because, where there is no equality, there is no pride; where there is no justice, there is no dignity; and where there is no love, there is no self-esteem. And, no society, no nation can be fully healthy and happy without pride, dignity and self-esteem.

Let's then say it this way, we can put all black schools on a par with all white schools of the best quality. If this is done, some say, it will be unnecessary to worry about integration. Children of all races will then have equal educational opportunities everywhere. But my brother, one of the most important ingredients of education is *Hope*, hope for a better future, hope to become an accepted member of society, hope for an end to discrimination, hope for dignity and self-determination. Racially isolated schools do not provide or satisfy any of these needs. Instead they spell segregation, and no matter how benevolent segregation could be, it is rejection. Segregation is no justice; it is the classic symbol of centuries-long traditions of racism. It says unequivocally to black people; You are inferior. The very "instiution of segregation" forces black people into the role of lowest-class-citizens. It makes us afraid to voice our feelings and sufferings for fear we'll never be accepted by the structure that oppresses us.

We have a long road before us, and no one should delude himself that the myths will soon be destroyed or even that the long hostility of white America to integration can be entirely overcome. But since Education is what it is, and since it was established for this white structure, we will have to live with the myths and with the hostility and take the road that is only one-way, without choice: Justice, integration. I mean *Integration*, not just putting children of all races together, this does not necessarily mean integration. We could still have complete segregation within a school if true Education does not occur. I mean Education which will close the racist gap, Education that shows white and blacks in their true role in American history. It may be complex, and difficult but it is of utmost importance. Education must be on an equal basis if it's really going to take place in this nation.

Joe's answer then could well be a different one, like for instance: "Oh! they really have a good start in life, and a better training than I ever dreamed they would get."

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THE CONSTITUTIONAL ISSUES
Review of Supreme Court Decisions
Remarks by

Hayden Gregory, Chief Counsel
Community Relations Service
U.S. Department of Justice

To the Ohio Council of Churches
Conference on Desegregation in Ohio Public Schools
Columbus, Ohio, October 9, 1976

The provision of the U.S. Constitution which forms the basis of most school desegregation litigation is the Equal Protection Clause of the 14th Amendment. Any analysis, I think, of judicial development in this area of the law starts with *Plessy* v. *Ferguson*, [1] the famous–many would say infamous–1896 Supreme Court decision announcing the "separate but equal" doctrine. It's interesting to note that this case, which for almost 60 years stood as the precedent which blocked lower courts from ordering desegregation of schools, was not a school case at all. It involved rather a Louisiana Statute which required the segregation of passengers on railroad cars. As you know, particularly in regard to the 1954 *Brown* decision, the issue of whether or not courts are issuing "sociologically" based desegregation decisions rather than legally based decisions is a hot one. It's much older than *Brown*, and is, in fact, as old as *Plessy* v. *Ferguson*. In *Plessy*, the court said that the 14th Amendment doesn't mean that all distinctions based on race have to be abolished, or that courts should enforce "social, as opposed to Political," equality. Rejecting the argument that the law stigmitized black passengers who were so separated, the court said that if this was the result, it was the result of their own perceptions, not of the law itself. The court thus engaged in a bit of sociological speculation of its own, reaching a diametrically opposite result of that of the 1954 *Brown* court.

It was some 42 years later that the first inroads were made on the "separate but equal" doctrine in a school case. [2] It involved a Missouri Statute which provided that, in lieu of admitting black students to the only law school in the State, which was reserved for whites only, tuition of blacks to attend law schools out-of-state would be paid. The court ruled that it did not

[1] *Plessy* v. *Ferguson* 163 U.S. 537 (1896)

[2] *Missouri ex. rel. Gaines* v. *Canada* 305 U.S. 337 (1938)

matter if the out-of-state schools were just as good as the Missouri one, for compliance with the Equal Protection Clause is dependent upon what a State provides *within the State*. The court did not in any respect overrule *Plessy*, and stated that separation of the races in the enjoyment of privileges afforded by the State is permissible if the facilities are in fact equal and are provided by and within the State in question. This seems to suggest that the court was not looking primarily to the *harm* suffered by the black students, for the court said that the *equality* of the schools in adjoining states is irrelevent. We should keep this in mind when we try to interpret the *Brown* case, for this irrelevance of the proof of individual educational harm suggests that sociological data on detriment does not concern the court so must as the State action in isolating and classifying racial groups.

I think that lawyers should be particularly interested in the reasoning of the Supreme Court in the last case leading up to *Brown*, this being the 1949 case of *Sweatt* v. *Painter*. [3] It was also a law school case, and, as could be anticipated from the Missouri case, it involved the question of the adequacy of a separate law school set up for blacks, following the court's ruling that payment of out-of-state tuition was not adequate. Although the argument that separate is inherently unequal was vigorously urged upon the court in briefs and in oral argument, the court cited its obligation to decide cases on non-constitutional grounds whenever possible. It held that, under the circumstances existing in Texas, a separate *law school* education could not be equal. The court cited factors such as the size of the respective libraries, faculty, and student bodies in the two schools, as well as the absence of a law review and order of the coif at the black schools. Most impressive to the court, however, was the isolation of black students from professional colleagues. The court noted that 85 percent of the population (that is, all whites) were excluded from the black school. Thus, there would be no contact with the group from which came almost all judges and lawyers practicing in the State.

The landmark case of *Brown* v. *Board of Education*[4] was a consolidated appeal of cases from District Courts in Kansas, Virginia, South Carolina, and the District of Columbia, and from the Supreme Court of Delaware. *Brown* is actually two cases, known as "Brown I," decided in 1954, and "Brown II," decided in 1955.[5] *Brown I* is the Court's decision on liability, that is to say, on the constitutionality of separate public schools for different racial groups. *Brown II* is the Court's direction as to the methods to be utilized in dismantling the dual system of schools, a question that the Court set down for further argument when it decided *Brown I*. *Brown I* was argued in December 1952, and, because of the importance of the case, the Court set the case for reargument in December 1953, with the decision announced May 17, 1954. Chief Justice Earl Warren is reported to have held the decision in abeyance so that the Court could, if at all possible, reach a unanimous decision. The Chief Justice felt that decision of this magnitude needed to be by an undivided court,

[3] *Sweatt* v. *Painter* 339 U.S. 629 (1949)
[4] *Brown* v. *Board of Education* 347 U.S. 483 (1954)
[5] *Brown II* 349 U.S. 294 (1955)

and it of course was a unanimous decision.

The lower courts decisions in the *Brown* case had all adhered to the "separate but equal" doctrine, and relief had been denied in all cases except the Delaware case. There the State Supreme Court had ordered blacks admitted to white schools because the black schools were found to be not "equal" within the requirement of "separate but equal." Although it is the Supreme Court which has received the criticism of those who condemn the *Brown* decision as having been based upon "social experimentation," two of the lower courts whose decisions were being appealed had made specific findings that State-imposed segregation has a detrimental effect upon minority students. Since this paper is looking at judicial theory and its impact on local policy, perhaps I should address the question of why the identification of the basis of the *Brown* decision is so important? It is clear beyond question that the decision stands for the proposition that the provision of separate public educational facilities based on race and sanctioned by State law is unconstitutional. What difference does it make if the decision was based primarily upon a sociological finding that separate schools are educationally and psychologically harmful to the development of minority children, or if it was based upon the premise that classification and separation of the races by State action is "inherently" unconstitutional, and requires no specific showing of individual harm? One major difference is that the "sociological" theory leaves open the possibility that the grounds on which *Brown* was decided are open to challenge on each new case filed in the lower courts. In fact, precisely this approach was adopted by some lower courts following *Brown*. At least one Federal District Judge allowed testimony on the mental inferiority of the Negro race, including testimony asserting that Negroes have smaller brains. He made a finding that desegregated schools were actually harmful to Negro children.[6] This decision was, by the way, quickly and summarily reversed by the Fifth Circuit Court of Appeals, the Circuit in which it occurred. Similarly, if the basis of the decision is social science conclusions should not *Brown* be reversed if such thinking changes at some future time? In this regard, one is reminded of the change in position taken by Professor James Coleman of the University of Chicago on the benefits of a desegregated education to minority students. I, for one, do not read *Brown* and subsequent cases as requiring or permitting a reconsideration of the Brown decision every time a prominent social scientist, or even social science in general, reaches a different conclusion on the educational and psychological impact of segregated education upon our children.

Several factors lead me to this conclusion. One is the rather casual reference by the court to a psychological basis for the decision. It should be kept in mind that despite the volumes of sociological evidence in the record, the court made only one passing reference to such evidence. This was of course the famous "Footnote 11", which cited social science treatises to support the court's terse statement that "whatever may have been the extent of psycholo-

[6] *Stell* v. *Savannah-Chatham County Bd. of Education*, 220 F. Supp. 667 (S.D. Ga. 1963)

gical knowledge at the time of *Plessy* v. *Ferguson*, this finding"–meaning the lower court's finding–"is amply supported by modern authority." Footnote 11 is, in a word, only a Footnote. There is the court's quotation in *Brown* from the 1873 *Slaughterhouse Cases*[7] in which discriminatory legislation was condemned as "implying inferiority in civil society"–language which clearly speaks more to classification than to proven detriment. There is the clear and unequivocal declaration by the court that "separate facilities are inherently unequal." Further light is shed on the subject by the companion case to *Brown*, that of *Bolling* v. *Sharpe*[8], arising in the District of Columbia, where there is no "State action" and therefore no equal protection clause of the 14th Amendment. The court ruled that the practice of racial segregation in the public schools of the District of Columbia nonetheless violated the Due Process Clause of the 5th Amendment, stating that "*Classifications* based solely upon race must be scrutinized with particular care, since they are contrary to our traditions and hence constitutionally suspect." Finally, and perhaps most convincingly, in several cases following shortly after *Brown*, the court without written opinion struck down a number of classification-type segregation statues–involving access to beaches, parks, athletic events, etc.[9] –in which there was no sociological evidence of harm presented.

In asking for further argument before deciding the remedy ordered in *Brown II*, the court asked that number of questions be addressed by counsel in reargument. The questions suggested the range of remedial options apparently under consideration by the court. Possibilities ranged from a hard-line approach for immediate admission of black students to schools of their choice under direct order of the Supreme Court, to a gradual compliance, with the cases remanded to district courts which would fashion the details of the remedy. The court chose the latter, which euphemistically became known as the "with all deliberate speed" standard, taken from language in the final paragraph of the decision.

"All deliberate speed" proved to be more deliberate than speedy. Shortly after the *Brown* decision, the U.S. District Court for the Eastern District of South Carolina interpreted *Brown* to mean only that school authorities could not assign students on a racial basis.[10] Under this interpretation the so-called "Freedom of choice" approach prevailed, and very little desegregation took place. Keep in mind that in the period of time we are considering–the 50's and 60's–court cases on desegregation were dealing almost exclusively in the South, which prior to *Brown* had *by law* required the segregation of students by race. This of course is classic *de jure* segregation, and litigation in that period was almost always directed at the formulation of a remedy, since the state laws requiring segregation in and of themselves proved the plaintiff's case on the question of liability. It was not until the 1970's and considera-

[7]*Slaughterhouse Cases*, 16 Wall, 36 (1873)
[8]*Bolling* v. *Sharpe*, 347 U.S. 497 (1954)
[9]See, e.g., *Mayor and City Council of Baltimore City Council of Baltimore City* v. *Dawson*, 350 U.S. 877 (1958); *Holmes* v. *Atlanta*, 350 U.S. 877 (1955)
[10]*Briggs* v. *Elliot*, 132 F. Supp. 766 (E.D.S.C. 1955) (Three judge court)

tion by the Supreme Court of Northern cases involving Denver and Detroit that we saw further substantial developments in respect to liability questions.

By the mid-sixties, many lower courts began to impose an affirmative duty upon school boards to desegregate, and to reject desegregation plans unless they met one simple criterion: they must work. Lower courts were by no means unanimous on the question of whether such an affirmative duty exists. To resolve the split among the circuit courts of appeal, the Supreme Court granted review in the case of *Green* v. *New Kent County School Board.*[11] This 1968 decision has had an impact on the question of remedy equal to the impact of *Brown I* on the question of liability. The *Green* case involved a rural county in Virginia. Under the freedom of choice approach, no whites went to black schools. Although the court did not totally reject freedom of choice plans as a technique to desegregate schools, it did indicate that *any* approach taken by school boards would henceforth be scrutinized by the standard of "does it promise realistically to work, and promise realistically to work *now*." (Court Emphasis.) The court indicated that, where there has been a State-operated dual system of schools, an affirmative duty exists to take whatever steps are necessary to convert to a unitary system in which racial discrimination is eliminated "root and branch." I might add that the *Green* case involved a rural county in which there was residential integration, and busing of students was utilized to *maintain* segregation. The court took cognizance of this fact, and announced that, in view of the fact that simply splitting the district East and West for assignment of students would desegregate the system, i.e., adopting a "neighborhood school concept," a "heavy burden" is placed on the board to explain its choice of a less effective means. The following year, in *Alexander* v. *Holmes*[12], the court expressly rejected the "all deliberate speed" approach, vacated a delay order issued by the Fifth Circuit Court, and directed the circuit to order immediate desegregation of the school districts involved. Thus *Green* decreed that only plans which work will be acceptable, and *Alexander* made clear that when the court in *Green* said "to work now" it indeed meant *now*. The full significance of the 1969 *Alexander* case appears when one recollects that the United States was a party in the case, and the new Administration in Washington supported the delay.

The 1971 case of *Swann* v. *Charlotte-Mecklenburg Board of Education*[13] is perhaps most known for the fact that it was the first case in which the court reviewed a lower court order involving involuntary transportation of students, i.e., busing. The court, holding that desegregation could not be limited to the walk-in school, approved a transportation plan ordered by the district court. The Supreme Court did, however, indicate that "an objection to transportation of students may have validity when the time or distance of travel is so great as to either risk the health of the children or significantly

[11] *Green* v. *New Kent County School Board*, 391 U.S. 430 (1968)
[12] *Alexander* v. *Holmes*, 396 U.S. 19 (1969)
[13] *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971)

impinge on the educational process." This standard continues to be utilized by lower courts in the formulation of orders requiring transportation. Incidentally, the *Swann* order involved an average travel time for elementary pupils of 35 minutes each way, and an average distance of 7 miles: in the absence of special circumstances, it is unlikely that times and distances within these limits will be rejected as risking harm to students under the *Swann* ruling.

There are several other very important aspects to the *Swann* case. On the question of racial quotas or balancing, the Court stated that every school in every community does not always have to reflect the racial composition of the school system as a whole. While the Court did indicate that a rigid, precise mathematical ratio of the racial representation within the total system cannot be mandated for every school. It did approve a district court order which said that "efforts should be made" to reach such a ratio. The Supreme Court declared this to be merely a "starting point in the process of shaping a remedy." The Court indicated that it might even be permissible to leave some small number of one-race schools, but that in such cases, the burden would be on the school authorities to prove that school assignments were truly non-discriminatory.

The court also ruled on the application of the first so-called "anti-busing" law passed by Congress, Section 407 of the Civil Rights Act of 1964. That provision states that "nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards." The Supreme Court ruled that Section 407 states that Title IV grants no *new* powers to order tranportation, but does not restrict existing authority. It went on to state that legislative history suggests that Congress was concerned that Title IV might be read as requiring racial balance in so-called "*de facto* segregation." However, there was nothing in legislative history to suggest that any restriction was intended in cases where *de jure* segregation was found to exist.

In 1972, the year following *Swann*, the case of *Wright* v. *Council of the City of Emporia*[14] was decided. This case is significant in, one, that it is the first decision by the Supreme Court since the unanimous decision in *Brown* which was not also unanimous, and two, the basis on which the 5 to 4 court split. While it was involved in litigation to desegregate the *county* school system to which the *City* of Emporia sent its school children, the City decided to exercise the option it had under Virginia law to set up a separate city school system. The majority held that it does not matter whether the *purpose* of the City's action was benign or motivated by segregatory intent, for the *effect* would be to increase the racial imbalance in the schools. Chief Justice Burger, writing for the four dissenters, protested vigorously that if responsible local officials propose a desegregation plan that effectively eliminates the dual system, as the city-county system would, the Constitution does not require or

permit a court to order another plan that the court feels might do the job a little better. In a companion case involving the City of Scotland Neck, North Carolina, the four dissenters voted with the majority, in part because the authorization to set up a new school district was special legislation pushed through the State legislature for the express purpose of thwarting a desegregation order. In *Emporia*, the dissent felt strongly that the court was tampering unduly with the prerogatives of communities to legitimately structure local Government: 2 years later this minority became a majority and struck down a multi-district desegregation order in Detroit, largely on the same grounds of what the majority saw as district court interference with the functioning of school systems against which no finding of wrongdoing had been made.

Until 1973, every school desegregation case to reach the Supreme Court had been a case arising in Southern or Border States which had maintained a dual system of schools mandated or permitted by State law. This of course is traditional *de jure* segregation. In 1973, a different type of *de jure* case reached the high court, in the Denver case of *Keyes* v. *School District No. 1*.[15] Not only did Colorado not mandate a dual system, but the State Constitution prohibited classification of students on account of race. The central issue in the case as it reached the Supreme Court was whether or not proof that school authorities had pursued an intentional segregative policy in a substantial portion of the school district could support a finding that the entire system was segregated, and thus justify a systemwide desegregation order. *De jure* segregation includes not only that maintained pursuant to State Statute, but, as found by the district court in the *Keyes* case, segregation which is brought about or maintained by intentional State action. And, of course, in a legal sense, "State action" encompasses action taken by local entities set up under State law, including actions of school boards. The *de jure* segregative conduct found to have occurred in the Northeast section of Denver included structuring of attendance zones, the designation of "feeder" schools, site slection and size determination of schools in such a manner as to promote or perpetuate segregation. The court ruled that such action in one part of a system has reciprocal effect in other parts, and, unless the school authorities on remand could prove that the section of the City in which the violations were found to have occurred was a separate section of the school district isolated from the rest of the district, or unless they could prove that the segregative acts in the Northeast section of the system in fact had no effect in the rest of the system, then the district court must order "all-out desegregation of the core city schools." Although the court in *Keyes* was dealing with *geographic* sections of the school system, the rule of the case applies to other *substantive* sections of the school system as well. For example, in the Boston school case, the district court used the so-called "*Keyes* Presumption" to attribute segregation in elite examination schools of Boston to a segregative policy of the school authorities, although this policy was not specifically

[14] *Wright* v. *Council of the City of Emporia*, 407 U.S. 451 (1972).

shown to have been applied to the exam schools.

The last school desegregation in which the Supreme Court issued an opinion was the 1974 Detroit case of *Milliken* v. *Bradley*.[16] There the district court had found that there was *de jure* segregation in the Detroit system and, in considering a remedy, ruled that it was not possible to desegregate the Detroit schools, which were predominantly black, without involving suburban districts in the desegregation plan. Although there was no finding of wrongdoing by the suburban districts, the district court took the position they could be included, since there was proof of wrongdoing on the part of the State of Michigan, and since under Michigan Law, all school systems are creatures of the State. In a 5-4 decision, the Supreme Court reversed this order including the suburban districts and ordered that a "Detroit only" plan be formulated and implemented. Several factors prompted the Supreme Court to reverse this interdistrict order. One was the enormous scope of the order: it could have extended to 52 school districts with more than three-quarters of a million students. Another was the view of the majority of the Supreme Court that the district court had—to use the Chief Justice's own words—"Casually ignored or treated as a mere administrative convenience" school district lines. The court was particularly disturbed, I think, that the district court set aside these lines with no showing of wrongdoing on the part of the outlying districts. Moreover, these districts were given no opportunity to argue against liability on their part and only a late and very limited opportunity to participate in formulation of the remedy. My point is that it is not only *what* the court ruled in the Detroit case but *why* it so ruled that is important. The decision does not preclude the ordering of interdistrict desegregation plans. It does not do so because the court specifically leaves open the possibility of such a remedy given a showing of an interdistrict violation—such as complicity on the part of suburban districts or state segregative actions having multi-district effect.

The cases I have outlined represent the major developments to date as I see them in this area of the law. What can we expect to see as developments in the near future? It does not take any great clairvoyance to predict that we will see, as we have already seen, attempts to limit the scope of remedial court orders in desegregation cases. These attempts have been and will be on two fronts—Judicial and Legislative. Justice Powell's concurring opinion in *Keyes* provides a reference point for what I see as the primary thrust of attempts to restrict the scope of such orders by judicial interpretation. Justice Powell first argues for abolishing the distinction between *de jure* and *de facto* segregation, in favor of holding school authorities responsible for operating integrated systems, regardless of whether the causes of the segregation be *de jure* or *de facto*. He would, however, apparently curtail the transportation of students in urban areas where residential segregation is the most extreme. He reasons that, under the present approach, the remedies being ordered go much further than what is traditionally required in an equity decree: to put

[15] *Keyes* v. *School District No. 1, Denver, Colorado*, 413 U.S. 189 (1973)
[16] Supra, N. 3.

the plaintiffs in the same position they would be absent the violation.

President Ford is on record as having directed the Attorney General to find an appropriate case to petition the Supreme Court to reexamine the Constitutional requirements as they relate to formulation of remedies in the area of desegregation. In addition, as I understand it, the position of the Solicitor General, who is responsible for the conduct of the appellate practice on the part of the United States Government, is similar to that enunciated by Justice Powell in *Keyes*.

The Attorney General considered and decided against petitioning the Supreme Court to review the Boston case. The court, earlier this year, denied all petitions for certiorari which had been filed in the case, one of which advanced a theory of remedy close to that I have just described. How such an approach might work is illustrated by the dissenting opinion in a Three Judge District Court, issued in April of this year. Their order requires an interdistrict remedy to desegregate the schools of the Wilmington, Delaware, school district.[17] Although he agreed with the majority that it was necessary to go beyond the City Limits of Wilmington in order to desegregate the schools of Wilmington, which are about 80 percent black, the dissent stated he could not believe that, absent the violations found, the schools of Wilmington would be no more than 35 percent black, the upper figure fixed by the majority in its order. He suggested that they might be 2 to 1 or 3 to 1 black over white, and that the scope of the remedy should be so limited.

The Ford Administration is also considering the submission of a legislative proposal to Congress to accomplish the end results recommended by Justice Powell in the Denver case. Under this approach, district court judges would be, by statute, limited in the extent of desegregation they could order.

Whether such attempts to limit the remedial jurisdiction of the courts would be constitutional is an open question. In support of such an approach, proponents assert that Section 5 of the 14th Amendment gives Congress the power "to enforce, by appropriate legislation" the substantive sections of the Amendment. It is clear that Section 5 gives Congress the authority to *create* remedies for violations of the Equal Protection Clause; whether it also permits the *restriction* of such remedies is problematical; opponents argue that the Supreme Court's opinions in the school cases I have described create a merger of right and remedy, and that such attempts to restrict the remedy constitute impermissible restrictions on constitutional rights.

On the subject of legislation already on the books, I noted earlier that the Supreme Court has ruled that the "anti-busing" section of the 1964 Civil Rights Act in no way restricts court authority already in existence.

The same is true of the 1974 Amendments to the Educational Opportunities Act, which are popularly known as the "Esch Amendments," after their sponsor, Congressman Esch of Michigan. These Amendments provide a priority of remedies which courts are to follow in descending order in remedying

[17] *Evans* v. *Buchanan*, U.S. District Court, District of Delaware, Civil Actions Nos. 1816-1822, May 19, 1976, Slip Opinion (Three Judge Court)

denials of equal educational opportunity or of equal protection of the laws. They range from assignment of students to schools closest to their homes, through majority to minority transfers and revision of attendance zones and grade structures without requiring transportation beyond the next to nearest school, to "any other plan which is educationally sound and administratively feasible." The Amendments also purport to restrict the authority of courts in a number of other ways, including delaying implementation of orders requiring transportation until all appeals have been exhausted, and a prohibition upon beginning implementation of any order requiring transportation in the middle of the school year. All of these provisions are, however, prefaced by a statement that "the provisions of this chapter are not intended to modify or diminish the authority of the courts to enforce fully the Fifth and Fourteenth Amendments to the Constitution of the United States." Courts have uniformly read this language and the legislative history of the Amendments to mean that Congress did not in fact attempt to restrict the authority of the courts to fashion remedial orders to correct violations of the Equal Protection Clause. Most courts which have addressed the matter have at most found in the Esch Amendments a necessity for the court, in issuing its final order, to make a finding that it was not possible to correct the violations found by utilization of the highest priorities listed in the Amendments. That is to say, if the court finds that schools cannot be desegregated by use of majority to minority transfer plans, magnet schools, and the like, and they likewise cannot be desegregated without transporting students beyond the next to nearest school, the Esch Amendments at most require that the judge so state in his order. I have worked personally with a number of judges and witnessed their struggle to remedy violations of the 14th Amendment rights of school children with a minimum of interference with local prerogatives and processes. Not one of them, to my knowledge, had ever ordered the busing of a single student except to the extent necessary to comply with the Constitution.

THE ROLE OF THE CHURCHES IN QUALITY EDUCATION/ DESEGREGATION EFFORTS: CONFLICT AND RECONCILIATION

by Henry Russell

A summary digest and commentary gleaned from the reports of the Consultations on School Desegregation/Integration.

Any choice of role or strategy is, to some degree, a function of timing and available resources. Each stage in the progress toward quality education and school integration calls for somewhat different roles. Resources will affect the targeting of broad goals. Should you approach the problem, for example, in terms of desegregation with quality education components or does your organization have the energy for a more general commitment to improve the socio-economic structures which maintain substandard education? If, for the moment, desegregation is the most pressing issue, should you try for a metropolitan-wide solution or work only within the city limits? Answers to these questions do not come immediately but emerge as the strength and commitment of your resources becomes apparent.

Roughly three periods are experienced by a city with segregated schools. First is the time before a court has found the city to be guilty of *de jure* segregation. The second period extends from that original decision until a court of last appeal has ordered a finalized plan to be put into affect by a specific date. Last comes the time for implementing that plan peacefully. In general, this is the shortest of the three periods by a large margin.

I. WHO CAN ABIDE THE LAW?

The first period presents great difficulties to churches in the choice of roles. The only meaningful choice is often between advocacy of a desegregation suit or neutrality. The needs of this time are generally 1) to compile evidence and determine the facts about a city's school patterns and 2) to gather funds to defray the costs of legal action. The Legal Office of the NAACP has taken the initiative most often in this phase.

It is not enough to prove that a school system is in fact segregated, but that laws, regulations and the actions of duly constituted authorities have supported racial isolation. These actions might include gerrymandering districts to isolate racial pockets or to place areas of changing ethnic composition into minority dominated districts. Another tool is crosstown busing of white children out of black districts. Zoning laws which exclude the poor are additional contributors to *de jure* segregation. Digging for facts can be crucial.

Toledo, Ohio provided a neat case in point where city school board maps demonstrated an overall situation of racial equity in most districts. What the maps did not show was that the minority population of those districts was concentrated into a few almost all-black schools.

Active pursuit of such facts and of contributions to legal expenses is, strictly speaking, a position that favors only objectivity and fulfillment of the law. It is perceived, however, as active support of desegregation, busing and the importation of outside interference, i.e., the Federal judiciary. Those who are supporting the status quo, curiously enough, are also abiding by the law. They are merely assuming the defendant (the city) innocent until proven otherwise.

A pastor must consider carefully his commitment and that of his congregation to a prophetic role. If the church embarks on this course, it should be aware that it will be seen as fighting *against* the interests of some community members as well as *for* others.

A recent study of the Faith and Order Commission of the NCCC on the issue of Conflict found that, of those questioned, the

> majority view of the nature of social conflicts–namely that they derive from a lack of communication and information–in effect asks clergy and congregation to act as reconciling agents from a stance above the conflict that would take them out of any advocacy role. . . especially if the nature of the conflict is such that one side must lose something in order to resolve it. . .
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> This view of the role of the clergy and congregations clearly tends to the abandonment of prophetic activity on the part of synagogues and churches in local communities. It also may explain the resulting isolation from the power blocs and the substantive issues they generate.

Many churches have hesitated to take the strong social advocacy roles more common in the 1960's and early 70's. An alternative, even in this first period, is for the church to assume a leadership role in clergy education. It is not too early to draw together many faiths to discuss the laws on desegration, the history of court orders in other cities and the ethical problems of law and violence. While conversion may remain only an imminent possibility, information about the experience of other cities might defuse resistance and hearten those who support equal education opportunities.

II. SISYPHUS AND THE ART OF EARTH MOVING

Once a court order is obtained, there begins the period of most evident frustration. It is almost certain that the school districts of a city will balk when faced by a desegregation order. There is an impressive variety of stalling tactics available. The city might pack any committee entrusted to design a plan with those who will stall the report, perhaps indefinitely or submit a plan, say at the end of a year or two, which will be so inadequate as to force quality education proponents to appeal the plan and start over.

The longest delays, however, are likely to come from the process of appeal and counter-appeal staggering up and down the federal judiciary system like Sisyphus pushing his boulder up the legendary mountain.

A particularly revealing story was told by the late Dr. Charles Glatt, once the court appointment desegregation planner for Dayton, Ohio. His story concerned a lawyer for another city's board of education who said to his clients after a day's discussion,

> Ladies and gentlemen, I can assure you right now that if we go into court you will be found guilty as sin. I'll tell you that free. But I will also tell you that when you are found guilty to appeal. And I will advise you to appeal, and appeal, and to appeal *ad infinitum*. For two reasons. One is that there is a remote possibility that somewhere down the line in one of those appeals we might get a decision reversed. But the other reason is, that if I didn't give you that advice or sell you that advice, you'd just find your-selves an attorney who would.

Naturally, the most amusing part of the story is that school boards and cities have almost unlimited access to funds for attorneys, planners or anyone else they want, from tax dollars.

Yet this is potentially the most important and productive time to prepare the community for a future court order. Such an order, when it comes, typically gives little time for implementation of a plan. Much groundwork should be done a year or more before a final plan is approved. If the rock must be rolled up the hill again and again, perhaps some of the earth can be smoothed down along the way.

That work might best be termed reconciliation. Many churches have taken this as their chief role in the controversy. One may be for or against busing and still unite with others to work toward the best possible plan for quality education once a court has decreed that such a change must and will take place.

a) Organization

If a remedial plan is to succeed, it needs broad acceptance by many diverse groups in the community. The force of these groups must be brought to bear in support of quality education. Two basic strategy models are available. The first is a single broad-based coalition of interested parties. Its advantages are 1) easier coordination of activities and statements, 2) better news coverage as a central source of information, 3) greater strength and resources when working for a few definite goals. Its weaknesses are 1) it is apt to be cumbersome with its necessity for compromise and close coordination to avoid undue feather ruffling, 2) it presents a single target for opposition and opens the way for charges of elitism.

An alternate model encourages the growth of diverse, separate groups which work together on some issues but retain distinct organizational identities. Advantages are that 1) these groups can be more effective with their own constituencies, business people, for example, can wield more influence with other professionals than can clergy, 2) the support for reconciliation is more obviously diverse and community-based, 3) it is harder to keep track of

and to counter the work of many groups at one time. The disadvantages of this model are 1) it is more difficult to coordinate or publicize a decentralized effort, 2) duplication of work. Some combination of these approaches can be tailored to each specific city situation. Whatever group structure is chosen, at least some leaders should be parents of children who will be directly affected by the changes proposed.

No group which hopes to achieve peaceful desegregation in a city with hostile opposition can succeed if considerable effort is not expended long before any final decision is reached. There are a variety of tasks to be accomplished during this period with three basic goals in mind. One is shortening the time between the first and the final order; another is minimizing the build-up of fear and resistance that might lead to violence; the third is channeling positive ideas from the community into the shaping of a finalized plan.

If seminars have not been held previously, one of the first roles of the church is the beginning of an educational process about the laws on school desegregation and their application to a particular city. A review of case histories will help clarify such issues as the relation between quality education and desegregation, what constitutes *de jure* segregation, what are a city's chances of avoiding the court order, how did violence get started in other cities and how could it be avoided? Speakers from areas which have lived through these problems can be brought in to share experiences and point out trouble spots. These seminars can lead to the formation of pro-desegregation groups or perhaps to pro-law groups, dedicated to providing the court with aid and information in designing a city plan.

Some groups have made video tapes of these initial seminars to use at smaller gatherings and at staff training sessions, extending the impact of time and money spent. Other resources for staff training can be found in local expertise or in organizations like the Community Relations Service of the U.S. Justice Department, the National Education Association and the National Center for Dispute Settlement.

In addition to training, groups require resources and expensive staff time. One usable strategy is a time sharing method where staff employed by interested organizations is allowed to devote a percentage of time each week to the quality education effort. Funds have been raised successfully from sources like state councils on human relations, state or national councils on the humanities, or through application for ESAW legislation Title VIII funds (often with the help of a consultant such as the National Center for Quality Integrated Education). Other organizational building steps have involved the recruitment of committee membership from large organizations in the area such as the unions, businesses and social action agencies—even if the involvement is more in name than in participation. At least these groups will be recognized as siding with the law and show some of the breadth of your support. The formation of suburban coalitions is of great value if the court order is to be metropolitan-wide, affecting areas with distinct interests and power sources.

Various structural problems will arise because of the specific issue interests of each coalition member. It will take time to learn how much each group can afford to give or has reason to. The most productive results seem to be obtained when each group has one or two goals and several major objectives. Some of the larger tasks of whatever structure you choose will be: Community dialogue and information; interaction with school board personnel; media monitoring and information; and relations with government enforcement agencies.

b) Community

Interaction with the community has taken such forms as 1) organizing grass roots reconciliation groups or at least holding periodic meetings for gathering ideas to aid the court in plan formation, 2) serving as an aggression outlet for concerned parents, 3) providing a forum for parents to meet each other and discover their similar goals, 4) serving as a rumor control and information source. Hotlines, newsletters or drop-in centers in churches have all been used for rumor control, although each has its own drawback. The hotline and the drop-in center rely on the quality of personnel over an extended period of time, something that is hard to ensure. The newsletter is often out of date and inaccurate by the time it reaches its readers, causing some confusion of its own. Another part of the information task is to make speakers and materials available for community groups who have the desire to grapple with the question, but not the expertise.

c) School Board

School board personnel have been approached in other cities to ensure community input on any plan designed by the board and/or to press for the appointment of a committee within the school districts to provide more specific channels of grievance, like an Office of Desegregation. Other useful goals are maintaining pressure so that the board cannot "stall" on the issue and, monitoring the public funds that are being spent trying to avoid change.

Since the school board is a power center charged with responsibility for many people, it can be dealt with most effectively by those who also represent the interests of that population. Some groups have asked the heads of business organizations or the bishops of denominations to represent them before the board rather than strictly partisan social action workers or the leader of a single church.

Input with the school board should be geared toward many elements of quality education, not just the desegregation aspect. There are many possible advantages to moving away from an exclusive use of neighborhood schools which can be incorporated at the time of a court order. Among these are changing the grade structure (perhaps to K-5, 6-8 and 9-12), and building magnet schools into the new system with specialized curricula in the humanities, sciences or vocational education.

The board can avoid creating much of the helpless anger that is usually aroused over a busing plan, if it wants to. Students should know well ahead of time where they will be going in September, not be told a week before school opens. Moreover, it has been suggested that parents and children might be given a choice in school selection. For example, there might be a choice of say, ten schools—divided into two groups—one group close to home, another at a farther distance. A parent could choose 5 schools from each category in order of preference. If a child is not sent to his first choice, there is some chance that a 3rd or 4th choice will be honored. In any event, the transfer would not be totally divorced from the expression of preference. The time of choice itself would provide the family with a chance to learn about the schools available through school board publications instead of rumors.

Meetings at the same time under board auspices on the subjects of remedial education, discipline, etc. could be very revealing to black and white parents alike. They might be amazed at the similarity of their concern for their children's safety and development. While the board should take the initiative in these matters and not rely on the churches to do their work for them, a church could serve as a meeting place for the parents of children who will be brought together in a new school. White and minority churches have "paired-off" to hold gatherings before school begins with helpful results.

Most of the above assumes that the school board is not trying to design a program of maximum coercion and minimum gain to deliberately arouse public sentiment against a desegregation program. Another element in the picture is that school board members are elected officials and under the people's mandate. The election of representatives thus becomes a viable part of any strategy to effect quality education. Mr. Hayes Mizell from the American Friends Service Committee notes several cautions for this direction. Often one school superintendent or board president will institute a process of change, only to be ousted in the next election and find all his work undone. Even if this is not the case, to almost any politically liberal move there will be a conservative reaction, in a pendulum effect. Knowing this, no group should be so determined to back only liberal candidates that they do not also support more conservative members who will still be open to many reforms. The end of that road is usually an election of strongly reactionary figures who will set a program back many years.

d) Media

Media monitoring is a vital part of any quality education effort. "News" is generally the most sensational aspect of a story. Joseph Radelet, writing of the Detroit experience in helping newspeople cover the broad aspects of desegregation notes that a story "is not just a demonstration or an anti-busing rally. It can be stories on factual information (how many students are going where); it can be personal stories about children who are already benefitting from education in the city." Monitoring can help ensure that positive preparations for the reception of new students are covered as well as the more easily

publicizable demonstrations. Again, leaders in the community can be of great help in communicating with media representatives. This might be one of the specific goals set for a group willing to lend time for tangible projects to help the reconciliation movement. One objective could be to persuade TV stations to use commercial segments on desegregation which are available from HEW. The stations must use some public service announcements in order to maintain their licenses and might well be receptive to the HEW spots.

In addition to any suggestions on coverage angles, it is important that the media do not use inflammatory phrasing that is completely inaccurate. One clear example is the phrase "court ordered busing." The court orders the desegregation of school districts. State law is then responsible for ordering busing if students must move more than a certain distance. Too much mileage has been gotten out of opposition to *busing* in the last few years anyway. The NAACP points out in its booklet *It's Not the Distance, "It's the Niggers"* the too little quoted fact that in 1972, 43.5% of the total public school enrollment was being bused to school–mostly for reasons that had nothing to do with integration. "Racial balance" is another misleading phrase, conjuring visions of students weighed on scales by color. The courts order only a reasonable proportioning, not any sort of balance.

Don't assume that newspeople know the laws about desegregation or busing. Don't assume that they know about the history of desegregation and quality education in other cities. If the press is unfavorable, it may be due to the fact that accurate information is not reaching the reporters. Provision of that information is a priority task for any interested person.

e) Police

Although many areas of local governance are involved in a desegregation order, the importance of police cooperation cannot be overemphasized. Passive resistance on the part of police, even if short lived, can lead to spiraling violence at the first few days of school. With sufficient time for questioning and education, however, most officers will recognize that integration and busing are not issues of political preference, but issues of law and order. Seminar training on the legal issues and the maintenance of non-adversary relations with the police are key elements of pre-opening preparations. The Chaplain's Corps of the police department can be most helpful in this respect.

III. THE DAY COMES

a) Churches

Once a final plan has been approved and is no longer legally contested, remaining community resistance will probably stiffen. At this point, the role of the church is most clearly one of reconciliation. Regardless of personal opinion on a particular law, most people will agree that law must be upheld and that there is no good reason for children to get hurt in an ideological

clash. In the Detroit experience with busing, Joseph Radelet found that:

> Clergy preached on peaceful implementation and were able to get a far greater result than if they preached in support of busing or even for the need for school desegregation. The question became: Do you want peace or do you want violence? Many of those who chose peace, started to work for it, even if they opposed busing. Many anti-busers became positive workers due to this important approach.
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> Some clergy found it possible to talk about religious principles such as guilt (and sin) of segregation. But often such preaching, though true, was not timely in that it did more to unnecessarily alienate people who could possibly, in time, support peaceful implementation.
>
> Religious principles which were more fruitful to discuss were:
> a) Hope: The school system, the city *can* be the best ever. . .
> b) Be a parent: Care for your children (prepare and make the schools safe). Care for *all* children. . .
> c) Involvement and commitment: Don't assume someone else is going to make the necessary preparations.
> d) The truth: Get the truth, the accurate information.

Other preparations have included "Days of Prayer" for guidance through the desegregation process. The prayers were designed not to alienate anti-busers, although people often did object to them. Objections, in turn gave rise to discussion groups which sometimes led to organizations and action for reconciliation. If the days of prayer, perhaps one a month, are held at local churches rather than mass meeting places, a sence of involvement in the locale will be raised. In addition to prayer, statements in support of peaceful implementation might come from local religious groups. While developing these statements, a congregation can come to a clearer insight about its own feelings.

Some effort should be made to have one or two joint services for peace. While these events should not take the place of local meetings, they provide a more accessible channel for media reportage. An Open Letter to the Press could accompany or precede such an event shortly before school opening, to reaffirm the commitments of the community to peaceful implementation.

b) Private Schools

Independent school systems should not be neglected during this time. Proper caution can appreciably slow white flight to private schools. The diocese office of the Catholic church will be extremely helpful if the bishops make it clear that parochial education is not an excuse to avoid the law. If they supervise intake procedures accordingly, a rapid expansion of parochial enrollment will not occur. Other private schools might aid in the process of discouraging applicants who are seeking, not a special type of education, but a segregated experience.

The likelihood of a bulge in applications can be reduced, at least in the parochial system, if there is a coordinated effort at clergy and parent education. Well organized teaching seminars might be presented on the vicariate level, with more relaxed discussions possible when back in the parish houses.

c) Students and Teachers

Finally, it is important not to neglect the groups who will be most directly affected by these changes–the students and teachers of the systems involved. If adults are having such problems over the issues, don't expect the students to be clear and unaffected. There are leaders in the schools who can sway many others. Such students are on governance panels, varsity teams or lists of troublemakers. It will be of great help if these students are given an opportunity to meet and discuss problems and goals. Anti-racism or human relations training can be useful for them as well as for clergy and teachers. The students are the center of social dynamics in the school, if they can stay cool, it doesn't matter as much what their parents are up to.

When integration is at hand, teachers often face transfer from district to district to provide some reasonable percentage of minority teachers in formerly all-white districts. This creates tangible problems in terms of varied pay scales, seniority, working hours, conditions, etc. If the teachers are not to oppose quality education plans, attention must be devoted to ensuring 1) that their livelihood is not threatened by a transfer and 2) that the changes proposed will indeed improve the education offered.

There are real problems of discipline in a school system that has long neglected its children, black or white. The movement of children from one school to another will make that neglect more obvious to parents who previously have not faced it. Discipline problems, remedial education needs, all will be met first by the teacher. He or she has a right to expect support from the community in trying to help children damaged already by years of neglect. Otherwise few teachers will readily welcome an influx of new problems into the classroom or a transfer to a tougher assignment.

IV. FOR I HAVE WALKED IN MY INTEGRITY

If the intermediate planning has been well-executed and if God is willing, the implementation of a final order should be chaotic but not disastrous. On opening day the contribution of churches can take many forms, most involving large amounts of volunteer effort. The day is bound to be hectic with many errors and mishaps occurring. Volunteers to help guide bemused children and to monitor the peaceful implementation are important. School halls, cafeterias, key street corners are all areas where an adult presence can calm first day jitters and hostilities. Clergy presence is especially helpful since it is highly visible and seen as friendly by almost all.

Information Centers on a local and centralized basis with numerous phone lines can provide places for parents to call for school or transportation arrangements. Local churches can become drop-in centers where worried parents can have a free donut and coffee and share some of their anxieties at a new situation. Areas for peaceful demonstrations should be set aside for those who wish to express a lawful disapproval. Bi-racial response teams might be stationed near these areas to help quell any violent incidents which

do occur. It is likely, however, that no one can be as effective as the local police force in anticipating and isolating problem areas, if they are determined to uphold the peace of the city.

AFTER

Finally, any group working for quality education should prepare itself for a period of post-desegregation apathy. A letdown in the efforts organized toward a specific end is almost inevitable after the goal is seemingly accomplished. Yet the goal of achieving quality education for the children of the city will be only a few steps closer.

The change from neighborhood schools to a larger participation in all-city education will alter the way parents need to become involved in their schools. Finding new ways to facilitate this involvement on a large scale will take its own energies after an initial breathing spell. With any luck, churches which have helped reconcile a city to the laws on desegregation will find they are already caught up in the call to form a permanent office on quality education to continue the work which has only begun.

Mr. Henry Russell is a free-lance writer and editor. His conscience fuddles between the wisdom of Mark Twain and of T.S. Eliot. Fortunately, neither gains a clear majority.

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An enlightening account of a 90 percent black elementary school in Los Angeles which showed up highest in IQ of all elementary schools in the city. Documents the travail middle-class black parents experienced in trying to compel the school to maintain high standards after it became effectively black.

Weinberg, Meyer. *Desegregation Research: An Appraisal*, 2nd edition. Bloomington, Indiana: Phi Delta Kappa, 1970. To be succeeded soon by *Minority Students: A Research Appraisal*, (Washington, D.C.: Government Printing Office, in press.) Sponsored by the National Institute of Education.

----------, and Gertrude Martin (eds.) *Covering the Desegregation Story: Current Experiences and Issues.* Evanston, Illinois: Center for Equal Education, 1976.

Six journalists tell about the problems of covering the desegregation story in Boston, Louisville, Milwaukee, Denver, Detroit, and Wilmington, Delaware. Five desegregation experts discuss their specialties.

White, Ivan A. *The Effects of Public School Transportation Upon the Overall School Adjustment of Urban Elementary School Students.* Doctoral dissertation, University of Oklahoma, 1970. University Microfilms Order No. 71-1509. See, by the same author: "Effects of Busing on Urban School Students," *Educational Leadership*, 29 (1971) 255-257.

This most detailed study of the effects of transportation—without regard to desegregation—finds there are no effects: transported children learned as much as non-transported children.

The White Child in Desegregated Schools, Evanston, Illinois: Center for Equal Education, 1976.

A collection of five articles on the white child in predominantly black schools, on whether segregation is an educational advantage for white children, and other topics. Contains extensive extracts from unpublished transcripts of U.S. Commission on Civil Rights hearings in Louisville and Boston.

Willie, Charles V. with Jerome Beker. *Race Mixing in the Public Schools*. New York: Praeger, 1973.

A close analysis of four desegregated schools in Syracuse, New York. Contains outstanding discussion of the educational leadership role of school principals in managing desegregation.

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